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NEPA Draft Report Comments
C/O NEPA Task Force
Committee on Resources
1324 Longworth House Office Building
Washington, D.C. 20515

NEPA Task Force:

On behalf of the **Allegheny Forest Alliance**, a non-profit coalition of school districts, municipalities, businesses and industries throughout the region of the Allegheny National Forest in Pennsylvania, I offer the following comment regarding the **NEPA Draft Report**. I will do so according to groups and subtopics.

Group 1: Addressing delays in the process

Recommendation 1.1: Amend NEPA to define “major federal action.”

We strongly support this recommendation because the current political climate has resulted in federal agencies across the board considering nearly all actions to be “major,” resulting in the agencies inability to respond in a timely manner. Additionally, any definition of “major federal action” must address the scope of the term “significant” as well provided that term is included in the final draft.

Recommendation 1.2: Amend NEPA to add mandatory timelines for the completion of NEPA documents.

Although we are mindful that haste often leads to waste, we support the concept. We disagree with the length, however, and believe 12 months (EIS) and 6 months (EA) are more appropriate than 18 and 9. In addition, 12 and 6 are consistent with the original timeline described on page 18 of the report. We also believe the reduction in time would reduce documentation from the current average of 742 pages to the originally intended 150 pages.

Recommendation 1.3: Amend NEPA to create unambiguous criteria for the use of Categorical Exclusions (CE), Environmental Assessments (EA) and Environmental Impact Statements (EIS).

We strongly support this recommendation. Categorical exclusions are a management tool necessary for rapid response to catastrophic events where clearly environmental impact is minimal. Environmental Assessments must fit such circumstances.

Recommendation 1.4: Amend NEPA to address supplemental NEPA documents.

Any provision that limits documentation legitimately is necessary in order to control the size of the document and the time required to put it together.

Group 2 – Enhancing Public Participation

Recommendation 2.1: Direct CEQ to prepare regulations giving weight to localized comments.

We strongly support this recommendation. Granting deference to local interests is essential because local citizens must live daily with the consequences of planning decisions. In addition, weight must be given to substantive comment not just number of comments.

Recommendation 2.2: Amend NEPA to codify the EIS page limits set forth in 40 CFR 1502.7.

We support the recommendation as stated earlier in **Recommendation 1.2.**

Group 3 – Better Involvement of State, Local and Tribal Stakeholders

Recommendation 3.1: Amend NEPA to grant tribal, state and local stakeholders cooperating agency status.

We agree with this recommendation. Local stakeholders need to be thoroughly integrated in the federal planning process because they are often engaged in concurrent, related planning. Local initiatives deserve the respect cooperating status affords. In addition, the USFS is obligated to do so under **36 CFR Section 219.14** (early and frequent opportunities to participate and contribute).

Recommendation 3.2: Direct CEQ to prepare regulations that allow existing state environmental review process to satisfy NEPA requirements.

We strongly support this recommendation. The duplication of time and money under current state of affairs is unwarranted to say the least.

Group 4 – Addressing Litigation Issues

Recommendation 4.1: Amend NEPA to create a citizen suit provision.

We support the judicial review proposals as stated. We recommend adding two other provisions as well. Having an economic interest in the proposed action will not deny an entity legal standing and plaintiffs must post a bond to offset potential losses incurred as a result of litigation.

Recommendation 4.2: Amend NEPA to add a requirement that agencies “pre clear” projects.

We do not support having CEQ serve as a clearinghouse for monitoring court decisions because bureaucratic analysis would only enhance delay. Having CEQ update rules periodically reflecting legal precedence makes better sense.

Group 5 – Clarifying alternative analysis

Recommendation 5.1: Amend NEPA to require that “reasonable alternatives” analyzed in NEPA documents be limited to those which are economically and technically feasible.

While we support the “reasonable alternative” concept, we are concerned about the USFS willingness to address cost substitutes such as stewardship contracting. It would be expedient for that agency to simply say they “do not have the resources” and therefore according to this provision dismiss the alternative. We firmly believe, however, dismissing alternatives because of the adverse socioeconomic consequences needs to be at the core of the issue.

Recommendation 5.2: Amend NEPA to clarify that the alternative analysis must include consideration of the environmental impact of not taking an action on a proposed project.

Taking no action contradicts the whole purpose of project or decision because it invalidates the “desired future condition,” which justifies the action. We believe the analysis of the “desired future condition” must include the consequences of no action thereby making such an alternative redundant and unnecessary.

Recommendation 5.3: Direct CEQ to promulgate regulations to make mitigation proposals mandatory.

We disagree with this recommendation. Mitigation activities must be included in planning, but implementation must be left to the discretion of the agency.

Group 6 – Better Federal Agency Coordination

Recommendation 6.1: Direct CEQ to promulgate regulations to encourage more consultation with stakeholders.

We do not disagree with the proposal in principle, but recognize that NEPA is more about public disclosure than public participation. Other federal laws and regulations promote such participation. Adding such a requirement to NEPA is simply duplication.

Recommendation 6.2: Amend NEPA to codify CEQ regulation 1501.5 regarding lead agency.

We support codifying a portion of **40 CFR 1501.5** to strengthen lead agency status.

Group 7 – Additional Authority for the Council on Environmental Quality

Recommendation 7.1: Amend NEPA to create a “NEPA Ombudsman” within CEQ.

We do not support this recommendation because it duplicates the responsibilities of other agencies such as EPA and creates additional layers of bureaucratic review thereby extending the timeline for document approval.

Recommendation 7.2: Direct CEQ to control NEPA related costs.

In light of current federal spending, we vigorously support this recommendation.

Group 8 – Clarify meaning of “cumulative impact.”

Recommendation 8.1: Amend NEPA to clarify how agencies would evaluate the effect of past actions for assessing cumulative impacts.

Recommendation 8.2: Direct CEQ to promulgate regulations to make clear which types of future actions are appropriate for consideration under the cumulative impact analysis.

We could not agree more with these two recommendations. As it currently stands, federal courts are at liberty to determine the extent of past and future cumulative impact necessary for project analysis. Since federal judges are not obliged to issue consistent opinions, agencies such as the USFS are forced to deal with an ever expanding scope of analysis and speculation. Provided CEQ acts on these recommendations, and we encourage them to do so, courts would be obligated to render judgment consistent with the regulation and not personal opinion.

Group 9 – Studies

Recommendation 9.1: CEQ study of NEPA’s interaction with other Federal environmental laws.

Recommendation 9.2: CEQ study of current Federal agency NEPA staffing issues.

Recommendation 9.3: CEQ study of NEPA’s interaction with state “mini-NEPAs” and similar laws.

We endorse all three recommendations and would not limit the information to the House Committee on Resources, but would make it available to the public as well.

On behalf of the coalition, I thank you for opportunity to participate through comment in this important and worthy task.

Respectfully,

Jack Hedlund, Executive Director